

Non-Discriminatory PSTN Interconnection For All Broadband VoIP Traffic

WilTel Communications
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Intercarrier Compensation Discrimination Must Not Be Extended to Broadband VoIP

- Broadband VoIP is new and different – it is not contemplated by the existing “local” or “long-distance” regulatory regimes.
 - *Vonage Preemption Order*: IP-enabled traffic with one end over broadband facilities and interconnected with the PSTN – referred to as “VoIP” – is jurisdictionally interstate.
 - Because VoIP services are purely interstate, the FCC has clear authority to get VoIP off on a non-discriminatory footing.
- The irrationalities, distortions, and arbitrage of the “old” intercarrier compensation rules must not be extended to new VoIP services.
 - Generic intercarrier compensation reform for “old” non-VoIP services will take time.
 - Meanwhile, the FCC must ensure that new VoIP services thrive free of uneconomic distortions.



Discriminatory VoIP Interconnection Requires Immediate Attention

- De facto discrimination is occurring based on “self-help” by companies taking regulatory risk.
- With the explosive growth of VoIP, new discrimination is threatened by private arrangements.
 - In the absence of clear direction from the FCC, new discriminatory compensation structures are emerging for this new form of traffic.
 - *E.g.*, Verizon-Level 3 interconnection agreement.
- Time is of the essence – the FCC must act quickly to address this problem before it gets worse.



Non-Discrimination Principles: The Same Interconnection Policy For All VoIP Providers

1. Rates. All providers of broadband VoIP should pay the same to interconnect with the PSTN.
2. Trunking. VoIP providers should not be forced to set up separate “VoIP” trunks to connect to the PSTN, or receive benefits or detriments based on how their networks are configured.
3. Retail/Wholesale. The same treatment should apply regardless of whether VoIP is provided by a single entity end-to-end, or whether multiple providers are involved.
4. Bottleneck. Protect VoIP providers from bottleneck market power of all carriers with connections to PSTN end-users.

Non-Discrimination Principle #1: Rates

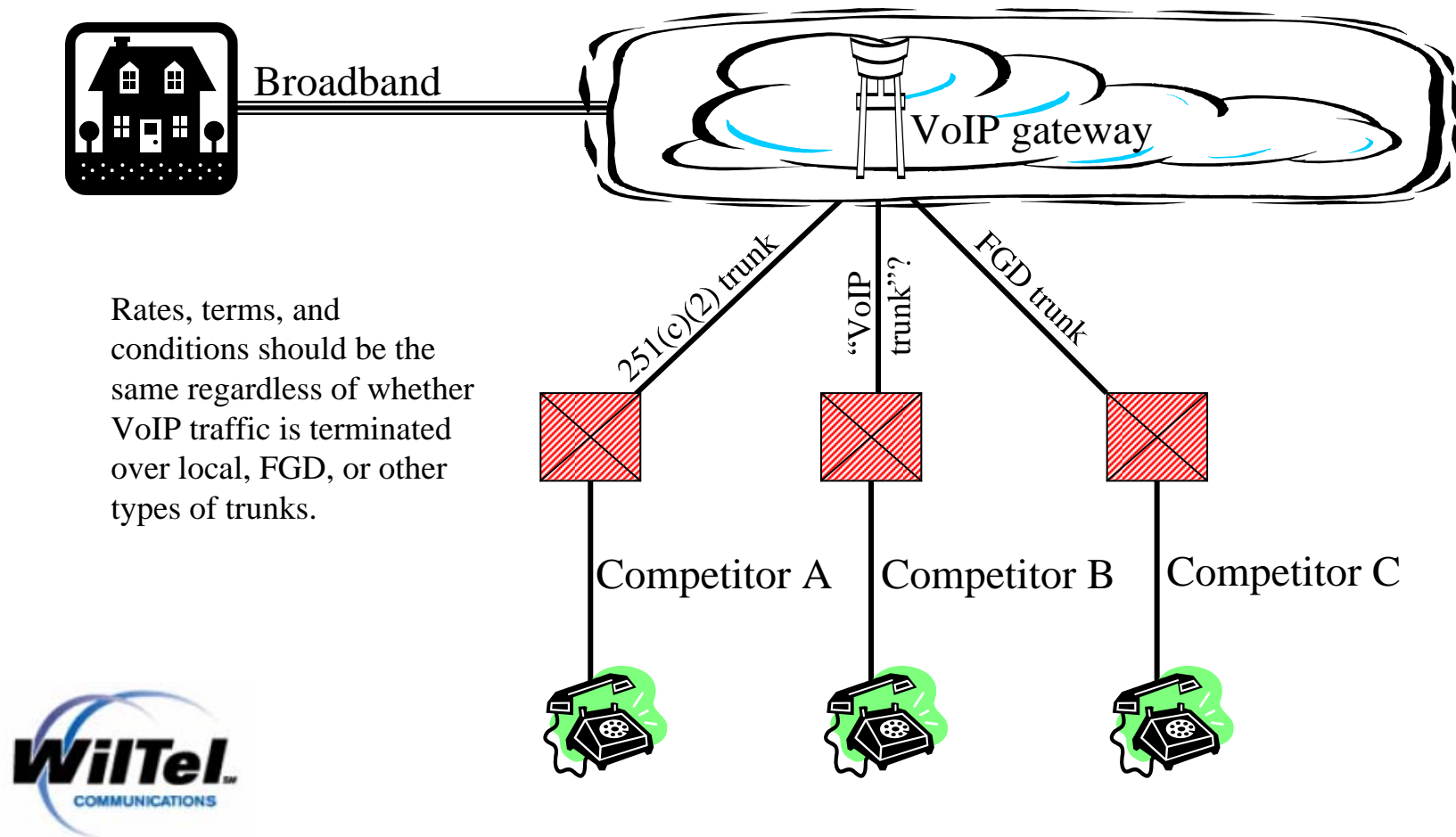
- Rate level for interconnecting VoIP traffic to the PSTN could be equivalent to (1) local reciprocal compensation, (2) interstate access, or (3) something else.
- Most importantly, all VoIP providers should pay the same to interconnect with the PSTN.
 - VoIP providers should not pay more or less based on other services they provide (*e.g.*, local switched, long-distance, or information services).
 - No discrimination based on the legacy non-VoIP services they also provide.
 - No requirement to enter non-VoIP markets to obtain non-discriminatory VoIP interconnection.
 - It shouldn't matter whether VoIP providers fall into the "CLEC" or "IXC" category. Because VoIP is jurisdictionally interstate, neither state CLEC nor IXC certification is relevant.



Non-Discrimination Principle #2: Trunking

- VoIP providers should not should not be forced to set up separate “VoIP” trunks to connect to the PSTN at “VoIP interconnection” rates.
 - VoIP traffic may be interconnected over existing facilities, whether they also serve as local interconnect trunks or Feature Group D (“FGD”) trunks when they carry non-VoIP traffic.
- In particular, VoIP interconnection rates must not favor one trunking network over another. This would unlawfully import historic discrimination into the new broadband world.
 - Local interconnect trunks and FGD trunks are technically identical.
 - Carriers that already have extensive networks – whether they use FGD or local interconnect trunks – should not be forced into costly and inefficient network rearrangements when they compete in the VoIP market.
 - Reasonable ILEC networking requirements (*e.g.*, direct end-office trunking, trunk efficiency rules, etc.) should be acceptable provided that they are applied even-handedly based on costs.

No Discrimination Based on Trunking Arrangements Used by VoIP Providers



Non-Discrimination Principle #3: Wholesale/Retail

- The same treatment should apply regardless whether VoIP is provided by a single entity end-to-end, or whether multiple providers are involved.
 - Wholesale providers who transmit VoIP traffic on behalf of others should be treated the same as retail VoIP providers.
 - *See AT&T IP-in-the-Middle Order*, ¶19.

Non-Discrimination Principle #4: Bottleneck Protection

- Carriers that control bottleneck access to PSTN end-users – whether ILECs or CLECs – have market power.
- They should not be allowed to exploit that market power, such as by unilaterally imposing unfavorable or discriminatory interconnection arrangements on VoIP providers.
 - The Commission has recognized this problem in the context of traditional interconnection, as when it capped terminating access charges that CLECs could impose on IXC's to reach their customers.
 - The same market problem exists in a VoIP world.



The Law Requires All VoIP Providers To Be Treated the Same

- Both Section 202 and Sections 251/252 prohibit unreasonable discrimination.
 - Imposing different charges on similarly situated interconnecting parties that cause ILECs to incur identical costs is unreasonably discriminatory.
 - Unlike legacy long-distance traffic, Section 251(g) “carve-out” (which authorizes different treatment for “classic” interstate access) does not apply to broadband VoIP service.
 - There is no justification for treating VoIP differently based on whether the provider is “local” or “long distance.”



Level 3 Forbearance Petition Raises VoIP Discrimination Issue

- Unless conditions are imposed, granting Level 3's petition for forbearance on applying access charges to VoIP would be unreasonably discriminatory and should be rejected.
 - Would give favorable rates to VoIP transmission providers with local interconnect trunks (251/252 interconnection agreements).
 - Would impose higher rates on VoIP providers with Feature Group D trunks (interstate tariffs), even though such connections are identical.



Proposal: Adopt Nondiscrimination Principles by Conditionally Granting Level 3 Forbearance

- Possible solution: grant Level 3's access charge forbearance petition **conditionally** – **only** if the LEC's interstate tariff allows interconnection of VoIP traffic at the same rates as those available to entities with interconnection agreements.
 - Would facilitate identical treatment of all VoIP transmission providers, regardless whether they use interconnection trunks or Feature Group D.
 - Would facilitate creating a new, economically rational interconnection regime for VoIP – not necessarily identical to access charges nor local reciprocal compensation.
- The same policy should apply whether traffic originates as broadband VoIP and terminates to the PSTN, or vice versa.
- The same policy should apply to CLECs as well as ILECs.



Conditional Forbearance: A Practical Approach for an Interim Policy

- Precedent for “conditional forbearance” under Section 10 of the Act: *CLEC Access Charge Order*.
 - FCC adopted “permissive forbearance” from statutory tariff requirements – conditioned upon CLEC access rates at or below benchmark levels.
 - Otherwise, FCC applied “mandatory forbearance” to CLEC access rates above the applicable benchmark.
- Conditional forbearance is practical for interim policy because it can be implemented within expeditious time frame.
 - Statutory deadline for FCC action on Level 3 petition is March 22, 2005.
- In the alternative, FCC could adopt this policy as a rule, based on the NPRM in the *IP-Enabled* proceeding. *See Depreciation Forbearance Order*, 15 FCC Rcd 242 (1999).

FCC Must Mandate Ways to Identify Broadband VoIP Traffic

- For this policy to work, VoIP providers can and should distinguish VoIP traffic from legacy traffic not subject to this policy.
 - A new SS7 parameter can be added to distinguish broadband-originated VoIP traffic (see Level 3's *ex parte* of 9/24/04).
 - A new parameter could be added to the Line Information Database (LIDB) to identify VoIP traffic terminating to broadband connections.
 - To prevent abuse and delay, FCC should require industry to implement technical solutions.
- FCC should also prohibit fraudulent manipulation of call data to prevent regulatory arbitrage.
- In the interim, VoIP providers can certify traffic, as traditionally done when interstate and intrastate traffic flows over the same networks.
 - Auditing should be allowed to prevent abuse.



Conclusion

- Keep the new world of Broadband IP Traffic free of unreasonable discrimination and irrational intercarrier compensation distinctions.
- Appropriate regulatory vehicle is *conditional forbearance* in the Level 3 proceeding.
 - Unless such anti-discrimination conditions are adopted, FCC should reject Level 3 petition.

